The

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What Are We Here For?*

By SILAS H. STRAWN, *President, American Bar Association*

"What Are We Here For?" is a question every one may ask oneself, regardless of sex, age, education or occupation.

Before a navigator starts upon a voyage over the sea he provides himself not only with a compass, but also a chart, in order that at all times he may know where he is, the direction he is going, the currents he will encounter, the adverse winds he must overcome, the icebergs he may meet, and the many other perils of the sea, the chart indicates. He knows that without this chart continuously before him, he would drift helplessly about and never reach his destination. Most of us, in our everyday activities, know in a general way the direction in which we are going. Yet, how few of us in our journey through life follow any definite chart or keep in mind a specific objective which we expect to attain in our life work.

Is it not lamentably true that most of the people in the world, illiterate and educated as well, drift through life without any chart and when the end comes and the final inventory of their life's accomplishment is taken, they find that the figures are all in the red and that they have accomplished nothing, either for themselves, their families, their city, their state, their country, or the world in general.

I assume we all realize the necessity of constantly asking ourselves what we are here for, but that some of us do not always insist upon compelling ourselves to answer the question.

In order that we may better know what we are here for, let us consider for a few moments where we are and the time in which we live.

Fortunately, we live in a country that has a greater variety of climate and diversity of natural resources than any other country in the world. Because of these natural advantages, the industry and inventive genius of our citizens, the stability of our government, and the efficiency of our educational institutions, the people of the United States long have been and probably long will continue to be the happiest and most prosperous of all the people of the earth. Here not only the favored few, but our citizens generally have better food, better clothing, better homes, better schools, better churches, more books, more newspapers, more magazines, more radios, more automobiles, more luxuries, more amusements and more of everything that goes to make up a full and happy life than have the people of any other land.

I shall not quote statistics showing the richness of our natural resources, how they have been harnessed and made to serve man or our unparalleled achievements in mass production and in efficiency of distribution, or the extent and diversity of our means of communication, because those facts are well known to you students of economics.

The statement is made, by a recognized authority, that the North Atlantic countries, so-called, consisting in the main of the United States, Great Britain, France, Belgium and Germany, constitute the power belt of the world; that in this belt the people have developed the natural resources, oil, gas, coal and water, so that with this power plus the energy of man, the so-called North Atlantic countries are able to do five times as much work as is done by those vast millions of workers in Russia, China and India, whose population is three times as large as that of the North Atlantic countries; that the United States alone, adding its machine power and man power, does forty per cent of the world's work. One man in the United States, with his mechanical contrivances, can do as much work in a day as thirty hand-working Chinese coolies.

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*EDITOR'S NOTE: *This discussion by President Strawn was recently delivered as an address to the students of the University of Michigan Law School, and has not before been published. It was furnished to the* BULLETIN *through the courtesy of Dean Justin Miller of the University of Southern California Law School.*

The people of the United States can live "on their own" better than the people of any other country, yet the truth is that the continuation of our present prosperity and happiness depends to a large degree upon our friendly relations with the other nations and the nature and extent of our foreign trade.

In considering our place in the world picture, we must remember our acquisition of foreign territory during the last thirty years. As the result of the Spanish War we acquired Porto Rico, the Philippine Islands and Guam. In the same year the Hawaiian Islands became ours by Act of Congress. Later we became possessed of Samoa, the Panama Canal, protectorates over San Domingo, Haiti and Nicaragua, and in 1917 we bought the Virgin Islands. The distance from the Virgin Islands to the Philippines is more than half way around the earth. The amount of additional territory we have acquired is upwards of 260,000 square miles, with a population of more than 20,000,000.

Every day there sail from our ports ships, destined for all over the world, loaded with cotton, automobiles, gasoline, coal and coke, wheat, tobacco, copper, lard, oil, agricultural machinery, iron and steel plates, boards and planks, and a vast number of other products. These ships bring back to us from foreign lands rubber, raw silk, coffee, sugar, furs, wool, tin, hides and those other things which we need. The total of our foreign trade for the year 1927 was more than $9,000,000,000.

The over-powering strength of our position industrially, commercially and financially and our general prosperity has aroused and will continue to arouse—unless we act wisely—the jealousy, if not indeed the enmity and antagonism of other nations. With nations, as with individuals, the greater the power, though not exerted, the greater the danger of exciting envy, fear and hatred.

That well known writer Garet Garret has well stated our case:

> "This is verily the least nationalistic great nation that has ever appeared in the world, the most internationally minded. It is, of all nations, the one most ardently committed to the ideal of peace, the first ever to combine vast material power with a truly pacific theory of foreign relations."

There has always existed among nations a strong nationalistic spirit. Since the great war this spirit of nationalism has been intensively increasing, particularly among the nations of Europe. Whatever may have been our personal ideas about the wisdom of our country becoming a member of the League of Nations, we must recognize the fact that our people have decided that for the present at least we will not join the League, and that we shall get along best by a policy not of isolation but of independence.

Confidence and good will are prerequisites to any effective dealings between nations. No good American, either under the stress of uncontrollable ecstasy or yielding to vain impulse, should do anything to lessen or destroy the confidence of the other nations in the honesty of purpose or the fair-mindedness of our government.

We cannot ignore the difficulties of the people of other nations in their efforts to adjust themselves to changed boundaries, to new forms of government, and to new economic conditions, in all of which we have a direct and vital interest. They do not want our sympathy. They resent our patronage. We must show the people of other lands that we are their real friends; that jealousy is littleness and magnanimity is bigness.

We are too remote to hear the rumblings of war in the clouds that from time to time overhang the other countries of the world, nevertheless disturbed conditions abroad always affect us at home.

While we cannot directly influence the action of the people of foreign nations, we can, nevertheless, by our conduct and our example exert a powerful influence upon the prosperity of the other countries and upon the peace of the world. That our government fully realizes that fact is evidenced by the persistent efforts of our Secretary of State to bring into effect an agreement among the world's great nations to abolish war.

Vast and potential as are the natural resources of the United States, the fact is that the greatest assets of our country are not its natural resources, its great industries or its marvelous transportation systems, but our men and women who are industrious, intelligent, progressive, courageous, loyal to our Government, free from bolshevistic tendencies and conscious of the fact that every citizen, rich or poor, has

an equal opportunity with every other citizen in our country to work out his or her own destiny.

Ours is the best plan for the government of a free people yet devised. He has a diseased, or at least a disordered mind, who would tear down, destroy or subvert, rather than support, the Constitution of the United States, which, as you know, has been designated as the "grandest instrument ever conceived by the brain or penned by the hand of man."

No great statesman of this or of any other age ever spent all of his time dwelling upon the defects of his government. The men who have contributed the most to the world's progress, or who have created anything that has endured, have spent their time in being and doing instead of in complaining and grumbling.

The greatest peril to this republic today is the indifference and apathy of our so-called "best citizens" toward the problems of government, local and national. The principles upon which our government was founded, evidenced by our Constitution, are immutable. The danger is that the maintenance of those principles and of the ideals of the founders of our republic may go by default, neglected by the best brains and energies of our citizens who are too deeply engrossed in production and accumulation. No man should be considered a "best citizen" who does not possess high character as well as business ability, who does not do something for his city, his State, or his country.

One of our best known statesmen recently has said:

"Politics are now and always have been a matter of secondary interest to most Americans, and there the danger lies. * * * * * *

"Today we are like a caravan in a desert that has been in a sandstorm, with the old landmarks swept away. Before it can continue its march, it must determine its preesnt location—and so must we. The drifting sands of party politics, the desire to win the immediate battle, the apprehension lest failure to yield to organized pressure may sacrifice a political future, and a score of even less creditable motives have sometimes blinded the eyes of public representatives to the great principles of free government."

This is a somewhat pessimistic view of the situation, yet to a large extent it is true.

There is nothing particularly new in political science. It is as old as civilization. May I quote from Aristotle:

"Democracy, for example, arises out of the notion that those who are equal in any respect are equal in all respects; that because men are equally free, they claim to be absolutely equal. Oligarchy is based on the notion that those who are unequal in one respect are in all respects unequal; being unequal, that is, in property, they suppose themselves to be unequal absolutely. The democrats think that as they are equal they ought to be equal in all things; while the oligarchs, under the idea that they are unequal, claim too much, which is one form of inequality. All these forms of government have a kind of justice, but tried by an absolute standard, they are faulty; and therefore both parties, whenever their share in the government does not accord with their preconceived ideas, stir up revolution. * * * *.

"The universal and chief cause of this revolutionary feeling has already been mentioned, viz.; the desire of equality, when men think that they are equal to others who have more than themselves; or, again, the desire of inequality or superiority when conceiving themselves to be superior they think they have not more but the same or less than their inferiors; pretensions which may and may not be just. Inferiors revolt in order that they may be equal and equals that they may be superior. Such is the state of mind which creates revolutions. * *"

Too many are shouting about the lack of liberty and of opportunity. Too many want some one else to do their work for them instead of doing it themselves. Most of the poverty that exists in this country is the result of shiftlessness and indolence and not of lack of opportunity for employment.

Let him who is discontented with his lot in this country visit other countries and see how the governments function and how the people live, and I predict that when he returns to this, his native or chosen land, he will thank God that he is a citizen and resident of the United States, even though, as has been facetiously remarked, "the Statue of Liberty does overshadow Ellis Island, a detention camp."

Demagogues and agitators we shall always have with us. That their specious arguments shall not attain momentum; that the foundations of our government shall stand unshaken by their assaults; that the people of the United States shall not become a mere aggregation of groups or of individuals each going his own way and each distrustful of his neighbor, but that we shall remain a united nation, continuing to enjoy an abundance of prosperity and happiness in the future, as we have in the past, is the task for the accomplishment of which all loyal citizens will enthusiastically enlist.

I have endeavored briefly to outline our place among the nations and our duty as citizens of a great republic. Let us now consider what we must do to qualify ourselves to perform our highest duty as citizens.

This great University of Michigan affords splendid educational and cultural opportunities. Culture, as I understand it, is not the cultivation of an effete complacency, a snobbish aloofness, a superiority complex. It is the ability to observe and to understand, the willingness to work, the kindness to sympathize and the capacity to accomplish.

The young men and women of this University are potential factors in maintaining and furthering the stability of our government and the welfare and prosperity of our people.

I assume you are here to get a thorough training—a productive education. Useless knowledge is worthless.

I read a few months ago about a man from a rural district who had written to the Rockefeller Foundation, complaining about what he regarded as a waste of money in teaching ancient languages. His particular peeve was the amount spent in teaching theological students Greek and Latin. He concluded his letter by saying: "English was good enough for Jesus Christ, why isn't it good enough for us?"

I dare say some of your faculty would differ from the gentleman from the country not only about the fact that the Christ spoke English, but also about the folly of teaching Greek and Latin. Some of us believe that a study of the languages and of the classics makes for discipline and orderly thought.

I take it that everyone in this University has reached the age when he is able to reason for himself and while he gives due consideration to the views expressed by his teacher, nevertheless, the University would fail in its object if its fundamental purpose were not to teach students to think for themselves; to be able to distinguish facts from fiction and to reason accurately from premises to conclusions. After all, the fundamental idea of all educational institutions should be to train students so that they are able to educate themselves.

That great educator, Doctor Abbott Lawrence Lowell, president of Harvard University, says:

"Self-education means two things — connected but not identical — first, a desire on the part of the pupil to learn, and second a self-directed attention, a personal endeavor to inquire.

"The first of these applies at all stages. Even in the rudiments of the three R's every teacher knows the difference in progress between the willing child who wants to master these arts, and the reluctant one who must be driven. The multiplication table must be learned by heart, and the earlier the better. It is *not education,* but a *tool* of *the trade;* yet willingness to learn it helps the teacher greatly, and the effect of this attitude of mind is certainly not less as one rises into stages where thought counts more and mechanical mental action less."

Colleges and universities can only furnish the facilities for men to fit themselves for their life work; colleges cannot make the men for the places which they themselves must create. Colleges and universities afford an advantageous environment and an opportunity for that orderly discipline which enables one to keep one's feet on the ground, however high one's ideas may soar. That is what you are here for.

That mechanical genius, Henry Ford, upon whose product as upon the British Empire, "The sun never sets," recently said:

"Merely having something on your mind is not thinking. Merely wondering is not thinking. Merely worrying is not thinking. Merely listening is not thinking. Thinking is creative or it is analytical. * * * * *.

"There is a vast difference between a man's being statically 'good' and being dynamically good. In one state, he is merely good negatively, and in the other he is good for something and puts that

goodness into effect. He accomplishes something for mankind. We make no progress so long as we deny this. Our motive can not be the attainment of some kind of goodness which is apart from life itself, but the attainment of inherent rightness physically, mentally, spiritually, so that this complex instrument which we call society may efficiently function. The right way is the only way. The rightness of an attitude or method goes down through all its relations. Rightness in mechanics, rightness in morals are basically the same thing and can not rest apart. * * * * *.

"Just as a clean factory, clean tools, accurate gauges and precise methods of manufacture produce a smooth working efficient machine, so clean thinking, clean living, square dealing make an industrial and domestic life a successful one, smooth running and helpful to every one concerned."

This University complies with the American Bar Association standards with respect to legal education and admissions to the bar. Therefore, it is unnecessary for me here to argue the necessity of a thoroughly well grounded education as a condition precedent to the practice of the law. That is the settled policy of this institution.

A few years ago President Coolidge in one of his addresses said:

"Education must teach more than the ability to earn a livelihood. It must teach the art of living. It is less important to teach what to think than to teach how to think. The end sought should be broad and liberal rather than narrow and technical. The ideals of the classics, the humanities, must not be neglected. After all, it is only the ideal that is practicable."

The several trade unions, such as carpenters, bricklayers, glaziers, lathers, painters, architectural iron workers, electrical workers, plasterers, plumbers and steamfitters require from three to five years apprenticeship before members may become journeymen in the several trades. From three to five years to qualify to do work which is largely manual. Yet there are sixteen of our States that have no definite general educational requirements before a student may qualify for the practice of the law, where the work is largely mental and continuously involves the rights and property and often the lives and fortunes of our citizens.

Never in the history of the world have the requirements for the successful practice of the law been so exacting. With the constantly increasing complexity of our social life, the enlargement of our governmental machinery, the extension of the means of communication, the increasing intimacy among the different peoples of the earth, due to those means of communication, the preparation of the lawyer today to do the work required of him never ends.

The lawyer must not only be more familiar with the general principles applicable to the business of his client than is the client himself, but, in addition, he must bring to the solution of the problems with which he is confronted a broad general knowledge of what is going on in business, politics and finance, not only in his own country, but throughout the world.

The practice of the law necessarily involves a combination of the ideal with the practical.

The succesful lawyer must have ideals. He must be intellectual in order that his knowledge may be continually increased and his view broadened, and yet however idealistic or erudite he may become, he will accomplish little if he is not able quickly to apply his fund of information to the practical solution of the problems which are his to solve.

A capable lawyer must be honest, mentally as well as commercially. He is commercially honest because his business instinct tells him that is always the best policy. He is mentally honest because he cannot be effective if he rides a hobby or sees red on any subject.

If the lawyer today is to measure up to the requirements expected of him by society; if he is to shape and guide aright the thought and action of the people and mould the public sentiment of his community, his city or his State; if he is to do his full duty not only as a lawyer, but as a citizen, he must be qualified by education and training. The more thorough the qualification, the better the lawyer and the better the citizen.

The lawyer holds and always will continue to hold a high place and exert a commanding influence in the community in which he lives.

On a previous occasion I have quoted the language of the Honorable John W.

Davis, in his address as president of the American Bar Association, in 1923, when he said:

> "Financiers may exercise the demon of a debased currency that tortures half the world; economists may teach men once again the inexorable laws of commerce and of trade; diplomats with infinite effort may quench the smoldering fires of international hate and discord; but none of these, nor all of these together, can put the world to rights if the streams of human justice do not run clear and strong."

Senator Root, in his address at the Conference of Bar Association Delegates in Washington, in 1922, said:

> "Not only has the practice of the law become complicated, but the development of the law has become difficult. New conditions of life surround us; capital and labor, machinery and transportation, social and economic questions of the greatest, most vital interest and importance, the effect of taxation, the social structure, justice to the poor and justice to the rich—a vast array of difficult and complicated questions that somebody has got to solve, or we here in this country will suffer as the poor creatures in Russia are suffering because of a violation of economic law, whose decrees are inexorable and cruel. Somebody has got to solve these questions. How are they to be solved? I am sure we all hope they will be solved by the application to the new conditions of the old principles of justice out of which grew our institutions. But to do that you must have somebody who understands those principles, their history, their reason, their spirit, their capacity for extension, and their right application. Who is to have that? Who but the Bar?"

The lawyers are expected to take the forward steps in our material as well as in our cultural advancement. Realizing their duty and responsibilities, a group of lawyers met at Saratoga, New York, in 1878 and organized the American Bar Association. The object of the Association, as defined by its Constitution is: "To advance the science of jurisprudence, promote the administration of justice and uniformity of legislation and of judicial decision throughout the Nation, uphold the honor of the profession of the law, and encourage cordial intercourse among the members of the American Bar."

Commencing with a small membership fifty years ago, without any definite program, the Association has grown to a membership of about 28,000 and today its activities cover every field of the law and exert an inestimable influence not only in advancing the science of jurisprudence, in promoting the administration of justice and uniformity of legislation and judicial decision throughout the Nation, but in upholding the dignity of the courts and the honor of the profession and in directing the affairs of our country along the pathway of its constructive progress.

A conspicuous example of the willingness of lawyers to perform public service, without any other compensation than the satisfaction of contributing to the common welfare, is the action of Dean Henry M. Bates of your law school who, during the past year, has given much of his time to the work of a committee which has been intensively engaged in endeavoring to work out a practical and legal plan whereby the natural oil and gas resources of this country may be conserved instead of wasted. Dean Bates was honored by being made the chairman of that committee.

The American Bar Association has twenty-five committees and nine sections, which cover the whole field of the law.

The Committee on Jurisprudence and Law Reform, of which the Honorable Henry W. Taft is chairman, and of which your Mr. Edson R. Sunderland is a potential member, has before it work of great importance, not only in promoting the passage of Federal legislation of a helpful nature, but in exerting its efforts to prevent the passage of legislation which, in the opinion of the committee, would retard the advancement of the science of jurisprudence, seriously interfere with the orderly administration of justice and destroy the dignity and efficiency of the courts. I may mention, in passing, a few of the reforms which this committee is attempting to bring about:

1. The registration of judgments—being a bill intended to promote the passage of a Federal law authorizing the registration of judgments, decrees and orders rendered by any court of record of any State or of the United States in any other such court of record. This legislation applies only to personal judgments, decrees and orders

rendered against parties who have been personally brought under the jurisdiction of the court, the object of the bill being, of course, to prevent unnecessary litigation in avoiding the necessity of suing upon a judgment in a foreign state.

Another bill is that of:

2. Declaratory Judgments. For several years the Association has been endeavoring to obtain the passage of a Federal law respecting declaratory judgments. That is, the court may render a declaratory judgment in all cases of an actual controversy as to the legal rights of the parties before the actual breach has occurred which would give the cause of action.

3. The Association for several years has been vigorously opposed to all legislation intended to destroy the efficiency and impinge upon the dignity of the Federal courts. Already there has passed the Senate a bill preventing Federal judges from expressing an opinion as to the credibility of witnesses or testimony given in Federal courts. This bill compels a Federal judge to submit his charge in writing at the conclusion of a trial and prevents him from expressing an opinion as to the credibility of witnesses or the weight of testimony. This bill, in the judgment of the Association, is revolutionary and tends to destroy the effectiveness of judicial procedure.

4. Another bill which has aroused very much discussion and antagonism is that which attempts to deprive Federal courts from issuing injunctions in all cases except those wherein property is involved which is tangible and transferable, thereby depriving the court of the right to issue an injunction in all patent and copyright cases and in cases to prevent violence by mobs. Concerning this class of legislation the late Justice Brewer of the Supreme Court of the United States once said:

> "To take away the equitable power of restraining wrong is a step backward through barbarism rather than a step forward toward a higher civilization. Courts make mistakes in granting injunctions. So they do in other orders and decrees. Shall the judicial power be taken away because of their occasional mistakes? The argument would lead to the total abolition of the judicial function."

This bill undertakes to direct a judicial decision with respect to what constitutes property under the Constitution, which is plainly a judicial rather than a legislative function. It takes away from the courts the power to preserve intact the subject-matter of litigation upon which the court is to exercise its authority. It deprives the citizen of an effective remedy for the protection of intangible rights in a case in equity. There are many other reasons why this bill is objectionable.

5. Another bill kindred to the Injunction Bill is one which is intended to destroy all jurisdiction of the Federal courts predicated upon diversity of citizenship. This bill is very prejudicial to the business interests of the country in that it would deter the investment of capital in foreign States because the right of recourse to the Federal courts in the protection of that capital or property would be taken away.

Another committee of the Association is endeavoring to bring about the passage of Federal legislation authorizing the Supreme Court of the United States to adopt rules respecting litigation on the law side of Federal courts as the court now does on the equity side.

For many years the Association has been trying to get the Congress to adopt a resolution to submit to the people an amendment to the Constitution of the United States to advance the inaugural date of the President and Vice-President and the sitting of the new Congress. Four times the Senate has adopted a resolution to correct this evil, but the House of Representatives has recently defeated it. In his annual address at Minneapolis, in 1923, President Davis said:

> "Historically it seems clear that the framers of the Constitution never intended that Congress should wait for over a year following its election to assemble or that any other than an incoming Congress should canvass the electoral vote. Yet, because of the purely accidental circumstances that the first Wednesday in March, 1789, was fixed as the date to begin proceedings under the new constitution, we have limped for a century and a half under an arrangement which leaves a dying administration to drag out its existence through four months of growing impotence, which calls upon an equally moribund Congress to crowd into three short months the labor of a year and which stays for twelve months the execution of a popular mandate. In no other country in the world where democracy prevails is there so

wide a span between the declaration and the execution of the popular will."

Being a democracy, it is assumed that the will of the people should be obeyed promptly and that the officers whom the people have elected should take office within a reasonable time after the election.

Can you imagine any private corporation which having selected new directors and officers, to take the places of those whose terms had expired, or who had been repudiated for incompetence, would permit the old officers to continue in control of the corporate machinery for three months and the old directors to sit in judgment upon the affairs of the corporation for thirteen months after they had been repudiated?

Another subject in which the American Bar Association is vitally interested is that of American citizenship. The Committee engaged in that work has been trying to re-establish the Constitution in the minds and hearts of the people. They have been endeavoring to bring about the teaching of our Constitution in our public schools, as they say, "not literally by rote, but its historical background and particularly the benefits and blessings that it has conferred upon the American people."

But this is not the time or place to go into an extended discussion of the work of the American Bar Association. I have mentioned a few of its activities, in which I assume that you, as students of the law, might be interested, and have endeavored to indicate some of the duties and responsibilities which presently will be yours, all of which you will be obliged to take into careful consideration when you are answering the question: "What Are We Here For?"

ATTENTION MEMBERS!

Saturday afternoon, August 4th, 1928, in connection with our entertainment of some three or four hundred American Bar Association delegates, we shall take them for a short automobile ride.

We wish our members to furnish their automobiles and personally be host to their guests.

Those who will furnish their autos please at once notify J. L. Elkins by letter at the Secretary's office, 687-691 I. W. Hellman Building, or phone TUcker 1384.

H. T. MORROW, *President.*

The President's Page

EDITOR'S NOTE: *President Hubert T. Morrow has delegated the writing of this page for the present issue to Mr. Norman A. Bailie, member of the Board of Trustees and chairman of the Judiciary Campaign Committee.*

Fellow Members,
Los Angeles Bar Association:

THE JUDICIARY CAMPAIGN

Los Angeles Bar Association is engaged in a campaign for the election of the eighteen candidates for the Superior Court Bench, endorsed by the recent plebiscite. Our By-Laws require us to do this. It is part of our contribution to the civic betterment of this community.

Certainly, judicial officers who are serving the public ably and well should be retained in office. By the same token, efforts to displace them by those who do not and cannot claim to be able more efficiently to serve the public should be discouraged.

These are the candidates whom you have endorsed and who have no opposition, with their plebiscite percentages:

Candidate	Qualified	Not Qualified	Total Opinions	No Opinion	Per Cent	
Victor R. McLucas	1416	29	1445	51	.979	Endorsed
Elliott Craig	1347	44	1391	105	.968	Endorsed
Thomas C. Gould	972	188	1160	336	.837	Endorsed
Leon R. Yankwich	1136	239	1375	121	.826	Endorsed
B. Rey Schauer	1280	53	1333	163	.960	Endorsed
Clair S. Tappaan	1351	35	1386	110	.974	Endorsed
Walter J. Desmond	1328	24	1352	144	.982	Endorsed
Joseph P. Sproul	1231	61	1292	204	.952	Endorsed
Chas. W. Fricke	1274	40	1314	182	.969	Endorsed
Marshall F. McComb	1266	39	1305	191	.970	Endorsed

These are the candidates whom you have endorsed and who have opposition, with their plebiscite percentages:

Candidate	Qualified	Not Qualified	Total Opinions	No Opinion	Per Cent	
Edwin F. Hahn	1278	71	1349	147	.947	Endorsed
Wm. C. Doran	1038	273	1311	185	.791	Endorsed
Douglas L. Edmonds	1001	191	1192	304	.839	Endorsed
Fletcher Bowron	1166	118	1284	212	.908	Endorsed
Daniel Beecher	989	119	1108	388	.892	Endorsed
Chas. C. Montgomery	1167	126	1293	203	.902	Endorsed
Wm. T. Aggeler	1204	71	1275	221	.944	Endorsed
Emmet H. Wilson	1123	88	1211	285	.927	Endorsed

What are *YOU* doing to assist the Judiciary Campaign Committee to win this election at the primaries August 28th?

The Bar Association is not making a campaign *against* any candidate. We are endeavoring to keep our judiciary out of politics and elect the candidates for the bench, who, by your votes, you have said are the best qualified for the positions they seek.

What are *YOU* doing on behalf of these endorsed candidates?

Have you sent in your contribution to the campaign fund?

Are you writing letters to your clients, endorsing the ticket?

The Campaign Committee is conducting a dignified campaign for the election of the endorsed candidates. But after all, this is *YOUR* Association. These are *YOUR* candidates. What are *YOU* doing for them?

NORMAN A. BAILIE,
Chairman, Judiciary
Campaign Committee.

LIST OF COMMITTEE SUBSTITUTIONS AND CORRECTIONS TO JUNE 28, 1928

Due to error the listing of the Committee on Arbitration as it appeared in a recent issue of the BULLETIN was incorrectly given. The correct assignments are as follows:

COMMITTEE ON ARBITRATION

Paul M. Gregg, *Chairman*
Waldo M. York, *Vice-Chairman*
Henry M. Lee, *Secretary*

Walter E. Burke
Thos. A. Berkebile
David R. Faries
H. L. Carnahan
Jas. G. Scarborough
Jesse F. Waterman

Substitutions on the various committees to date are as follows:

COMMITTEE ON ENTERTAINMENT OF MEMBERS OF AMERICAN BAR ASSOCIATION

Roy V. Reppy, *Secretary*
Bradner W. Lee, Jr.
Norman S. Sterry

COMMITTEE ON THE JUDICIARY

W. T. Craig

COMMITTEE ON NEW MEMBERSHIP

Ida V. Wells

COMMITTEE ON OFFICE MANAGEMENT AND EFFICIENCY

Bradner W. Lee, Jr., *Vice-Chairman*

COMMITTEE ON PUBLICITY

Bertin A. Weyl

COMMITTEE ON UNLAWFUL PRACTICE OF LAW

Charles Wellborn

Special announcements by law firms of new locations and new associations are most effectively made to the profession through the pages of the* BULLETIN. *In addition, such announcements serve as a manifestation of good-will toward and co-operation with the* BULLETIN *in its program of constructive endeavor for the welfare of the Bar Association.

PERSONAL COMMENTS

The Bulletin Committee has suggested that space in the BULLETIN *be given to personal items of interest relating to members of the Association. The editor welcomes this suggestion and will appreciate the assistance of attorneys who will mail to the* BULLETIN *office for publication personal comments concerning fellow-members of the Association.*

The office associates and business friends of Ray E. Nimmo, member of the firm of Nimmo, Leighton and Heath, on June 20, tendered him a delightful banquet at the California Country Club, the banquet being occasioned by Mr. Nimmo's contemplated departure for a vacation in Europe.

Doings of the Committees

COMMITTEE ON THE BULLETIN

At the last meeting of the Bulletin Committee, held in committee-room "C" of the Broadway Department Store, plans were outlined for increasing the advertising in the BULLETIN. There were present Colonel Andrew J. Copp, chairman; Messrs. Harry G. Balter, Maurice Saeta and Nathan Newby, Jr., of the Committee; R. H. Purdue, editor; Charles Baird of Parker Stone & Baird, publishers of the BULLETIN, and J. L. Elkins.

Through the efforts of Chairman Andrew J. Copp, contracts have been secured for a full page advertisement from the Union Oil Company of California and a half page advertisement from Rule & Sons, Inc., each contract to run for the period of a year.

COMMITTEE ON LEGAL EDUCATION

The Legal Education Committee met on June 11. Chairman George E. Farrand announces that the Committee is engaged in a study of the "Reciprocity" rule relating to admission of attorneys from other jurisdictions and in a further investigation of the history of Legal Education in Los Angeles County.

COMMITTEE ON CORPORATIONS

The Committee on Corporations met on June 15. Chairman Donald Barker announces that the Committee is engaged in co-ordinating their work with that of the State Bar Section on Regulatory Commissions on Corporations and awaiting report of the sub-committee.

COMMITTEE ON FRATERNITY

The Fraternity Committee met on June 18. Chairman Harold Kiggins announces that the Committee is engaged in consideration of several matters which it is hoped will contribute to general increase in social intercourse among the members at their monthly meetings.

COMMITTEE ON COURTS OF INFERIOR JURISDICTION

The Committee on Courts of Inferior Jurisdiction met June 19. Chairman Julius V. Patrosso announces that the Committee has under consideration:

1. Proposed increase in Jurisdiction of the Municipal Court;
2. Proposed increase in personnel of the Municipal Court;
3. Proposed rules for the Municipal Court;
4. Matter of unnecessary continuances;
5. Proposed master calendar for the Civil Business of the Municipal Court;
6. A procedure in the Municipal Court relating to Appeals, Transfer of Cases, etc.;

and that the Committee is awaiting reports from sub-committees.

COMMITTE ON NEW MEMBERSHIP

The Committee on New Membership met June 21. Chairman Robert A. Odell announces that plans are under way to secure the applications of many desirable new members for the Association and to increase the membership roll with a minimum of expense to the Association.

COMMITTEE ON PUBLICITY

The Publicity Committee met June 25. Chairman Marshall Stimson announces that the Committee is devoting its time and cooperation with the Judiciary Campaign Committee.

State Constitutional Amendment No. 16—Excess Condemnation

SPECIAL REPORT MADE TO THE COMMITTEE ON CONSTITUTIONAL AMENDMENTS

By JESS E. STEPHENS *of the Committee*

(Filed February 1, 1928)

In response to the request of Mr. Richard C. Goodspeed, chairman of the Committee on Constitutional Amendments, for a report upon the proposed Senate Constitutional Amendment No. 16, I have had an examination of the authorities made, principally by Mr. Harold Cragin of this office, and as a result of our investigation I submit a résumé of the principal authorities.

The discussions by the various courts indicate that the determination of the validity of a proposed State constitutional amendment authorizing *excess condemnation* would depend on whether or not such condemnation would be construed as being for a public use under the provisions of the Fourteenth Amendment of the United States Constitution prohibiting any State from depriving any person of life, liberty or property without due process of law. One of the cases which holds such a provision in a State statute to be invalid is Richmond v. Carneal, 106 S. E. 403 (Va., 1921). The statute in question provided that whenever any city or town proposing to open or widen a street by taking any part of a block or square in such a manner that the value of the property abutting the proposed street would be injuriously affected, unless the property on such block or square is re-platted, then the city or town may acquire by condemnation all or any part of the property on such squares or blocks and may subsequently re-plat and dispose of the property so acquired in whole or in parts. It is obvious from this provision in the statute that a very broad excess condemnation provision was under consideration by the court, and it is not surprising in any way that the Supreme Court of Virginia held that it did not contemplate a public use and was therefore invalid. The court relied primarily upon a number of Massachusetts decisions or opinions in reaching its own conclusion.

The principal opinion of the Massachusetts court is found in the case In re Opinion of the Justices, 91 N. E. 405 (1910). There the Legislature had requested an opinion from the court on a proposed statute authorizing the city of Boston to condemn property for a wide thoroughfare and, in addition thereto, land on either side of the thoroughfare back as far as the next street and to re-sell this land in suitable sites for the construction and use of warehouse and mercantile establishments. The court considered the proposed legislation unconstitutional as not providing for a public use so far as the excess condemnation was concerned. The court apparently construed the statute as either contemplating a profit to be made by the city in the control of the land adjacent to the thoroughfare or else promoting the interests of certain merchants or traders who might thereafter occupy the same, and concluded that either of these purposes did not constitute a public use, but was purely private. In re Opinion of the Justices, 91 N. E. 578, is another opinion by the Massachusetts court, in answer to an inquiry by the State Legislature concerning a proposed statute, very similar to the one just under consideration, and it was again suggested that the proposed statute would be unconstitutional. The court made reference to the existing statute, adopted in 1904, authorizing excess condemnation on remnants that were of such size or shape as to be unsuited for the erection of suitable and appropriate buildings, and indicated that this statute was constitutional, but went to the very verge of constitutionality. The Court, in referring to the grounds upon which they would sustain the remnant statute, stated at page 580:

> "They are, first, that there can be no taking outside the location of the public work, except of a remnant of an estate, a part of which is actually required for the laying out, alteration or location of a public work, and then only 'if the remnant left after taking such part would, from its size and shape, be unsuited for

the erection of suitable and appropriate buildings,'—in other words, only when there is a remnant that is too small or too illshaped to be of any practical value for the use to which valuable land is commonly put and secondly, that such a remnant can be taken only upon an adjudication that public convenience and necessity require the taking. Unless it can be said that public convenience and necessity never can require the taking of such a remnant, the statute cannot be declared unconstitutional.

"While it is plain that a city or town cannot take land outside a public work for speculative purposes, we can conceive of a remnant of an estate, a part of which is necessarily taken, which remnant is so small, or of such shape and of so little value, that the taking of it in the interest of economy or utility, or in some other public interest, may be fairly incidental and reasonably necessary, in connection with the taking of land for the public work. But this principle is not applicable to a taking for the larger purposes stated in the questions before us. We answer the questions in the negative."

It may be worthy of note in connection with these two Massachusetts opinions that such advisory opinions are not ordinarily given the force of judicial decisions. See Laughlin v. Portland, 90 Atl. 318. Where, however, the reasoning of the court appeals to another court, such an opinion is frequently relied upon with practically the same assurance and confidence that are given to a judicial decision, as is evidenced by the Virginia case.

In City of Boston v. Talbot, 91 N. E. 1014, the Massachusetts court had under consideration the validity of a State statute which related to the construction of tunnels or subways in the city of Boston and which authorized the Commission to sell or lease any of the land condemned for the tunnel whenever in their opinion the same should cease to be needed for such purposes. It was contended in this condemnation suit that the statute was unconstitutional, because providing for excess condemnation. The court upheld the statute, stating at page 1016:

"If the construction of the tunnel or of a station of the tunnel, would necessarily have a directly injurious effect upon land outside of the limits of the tunnel, so as to subject the city to a substantial claim for damages on that account, it might be reasonable and proper for the commission to take the land in fee and pay for it, and then, when the work was ended, to dispose of that part which was no longer needed. The Legislature well might provide for a taking of land and a construction of the work with a reasonable regard to economy, and a taking in fee of adjacent land likely to be seriously injured in the progress of the work might be more economical than a taking only of that which would be needed permanently. The uncertainties as to the extent of injuries to the adjacent land from construction might cause serious embarrassment in the assessment of damages, and sometimes lead to large awards, founded on risks that might prove to be much less than was at first supposed."

And again at page 1017:

"* * * It was right for the commission to consider the cost of acquiring that which would be needed permanently, and it was right to take the building above the part which would be occupied permanently, if, in reference to the probable damages that would be awarded for injury to the building and for interference with the use of it, this seemed reasonably necessary to an economical management of the business in their charge."

The language of this decision is reasonably lenient and broad, and perhaps more so than was actually made necessary by the facts being decided.

In Salisbury Land Improvement Co. v. Commonwealth, 102 N. E. 619 (Mass., 1913), the court, referring to the Talbot case, pointed out that the statute in the Talbot case did not permit a taking of land with a contemporaneous knowledge and purpose that a definite and separable part was not necessary for public use and that it authorized the subsequent sale of land only when it appeared that there ceased to be any need for it. In the Salisbury case itself the statute under consideration authorized the State to acquire by condemnation a large part of a beach town and to make of it a reservation for public recreation and to sell or lease any land not needed for the reservation to private individuals. This statute was held unconstitutional as authorizing condemnation of property which might, and probably would, in part

not be used for a public purpose. The court emphasized the fact that at the time of the condemnation it would be definitely known that part of the property would not be necessary or used for the reservation.

Lewis on Eminent Domain, in Section 311, makes the following brief but interesting comment regarding excess condemnation statutes:

> "Such statutes are not void, but they cannot be enforced against the will of the owner as the part not needed for the street would be taken for private use."

In re Albany Street, 11 Wend. 149, holds that a statute authorizing the condemnation of the balance of the lot facing on the street is not enforceable against the consent of the owner. If the excess combination feature is to be used, however, in connection with assessment districts for the opening or widening of streets, where the assessment is frequently placed upon property against the will of the owner, the provision would be of comparatively little value, unless it could be upheld against the will of the owner.

A very recent case by the United States Supreme Court, Brown v. U. S., 263 U. S. 78, makes it fairly certain that excess condemnation would be upheld by that court to a certain extent at least and possibly would authorize considerably more than a mere remnant provision. At the same time it makes it fairly certain that the broader provisions contemplating the condemnation of an entire square or block and the re-platting of this, and thereafter re-selling, would not be upheld as part of a public purpose.

The court in the Brown case had under consideration the validity of a Federal statute authorizing the condemnation of property for the building of a dam and flood reservoir behind it, which reservoir, it had been contemplated, would destroy a large portion of the town of American Falls in Idaho. The statute further authorized the condemnation of additional territory on the opposite side of the river, which additional territory was to be exchanged for the property flooded and the buildings on the other property were to be moved to the new location. It was contended by the plaintiff in error, who owned approximately 120 acres in the alternative tract, and whose land was being condemned, that the statute was invalid because, so far as the condemnation of his property was concerned, it authorized condemnation for a private purpose. The court stated at page 82:

> "If so, then the purchase of a townsite on which to put the people and buildings of a town that have to be ousted to make the bed of a reservoir would seem to be equally within the constitutional warrant. The purchase of a site to which the buildings of a town can be moved and salvaged and the dispossessed owners given lots in exchange for their old ones, is a reasonable adaptation of proper means toward the end of the public use to which the reservoir is to be devoted."

The court relied somewhat upon the necessity of the situation, which otherwise would have resulted in the practical destruction of three-fourths of the little town and of great consequential damage to the remainder. It held further, however, that the fact that in making necessary changes there might be a residium of townsite lots that would have to be sold, was a mere incidental feature and did not change the characteristic of the transaction as a whole. The court, referring to the Opinion of the Justices, 91 N. E. 405, stated at page 84:

> "The distinction between that case and this is that here we find that the removal of the town is a necessary step in the public improvement itself and is not sought to be justified only as a way for the United States to reduce the cost of the improvement by an outside land speculation."

The court relied to a considerable extent upon the case of Pitznogle v. Western Maryland R. R. Co., 87 Atl. 917 (Md., 1913). This latter case was a condemnation suit by a railway company under special statutory authority, in which the petition alleged that the land to be condemned was desired for railroad track and switching purposes, and "for the location of a substitute private road on the remainder thereof in place of the existing private road which the petitioner desired to close and to use for railroad purposes." The case came up on demurrer, the defendant contending that the petition itself disclosed that part of the property was not to be used for a public purpose. It appeared that a private right of way had to be condemned in connection with the proposed location of the railroad tracks. The court stated at page 919:

> "The condemnation of a part of this land here sought to be condemned for a substitute private road or way is incident

to and results from the taking by reason of public necessity of the existing private road for public use, and the use of it for such purposes should, we think, be regarded as a public use within the meaning of the Constitution."

It was, therefore, held that the condemnation as a whole was for a public purpose and valid.

As stated by the Supreme Court of the United States in Fallbrook Irrigation District v. Bradley, 164 U. S. 112, the statements by the Legislature and courts of the State, and even by constitutional provision, that the specified purpose is a public use, are not conclusive and the matter may be reviewed and decided by the United States Supreme Court in each instance. It is also true, however, that the Federal court will regard such statements by the State authorities with the highest respect and will conform to them if it is in any wise and reasonably possible.

In Clark v. Nash, 198 U. S. 361, the Supreme Court upheld a Utah statute permitting condemnation by one landowner of a right of way for water ditches for irrigation purposes on his land, concluding that, under the peculiar circumstances as presented, this would constitute a public use. The court stated at pages 367-368:

"Where the use is asserted to be public, and the right of the individual to condemn land for the purpose of exercising such use is founded upon or is the result of some peculiar condition of the soil or climate, or other peculiarity of the State, where the right of condemnation is asserted under a State statute, we are always, where it can fairly be done, strongly inclined to hold with the State statute providing for such condemnation."

In Jones v. City of Portland (1917), 245 U. S. 217, the court upheld a statute by the State of Maine authorizing any city or town to establish and maintain a fuel yard at cost. The question presented was whether this was a public purpose authorizing taxation therefor under the due process clause. The court stated at page 221:

"The act in question has the sanction of the legislative branch of the State government, the body primarily invested with authority to determine what laws are required in the public interest. That the purpose is a public one has been determined upon full consideration by the Supreme Judicial Court of the State upon the authority of a previous decision of that court. (Laughlin v. City of Portland, 111 Maine, 486.)

"The attitude of this court towards State legislation purporting to be passed in the public interest, and so declared to be by the decision of the court of last resort of the State passing the act, has often been declared. While the ultimate authority to determine the validity of legislation under the Fourteenth Amendment is vested in this court, local conditions are of such varying character that what is or is not a public use in a particular State is manifestly a matter respecting which local authority, legislative and judicial, has peculiar facilities for securing accurate information. In that view the judgment of the highest court of the State upon what should be deemed a public use in a particular State is entitled to the highest respect."

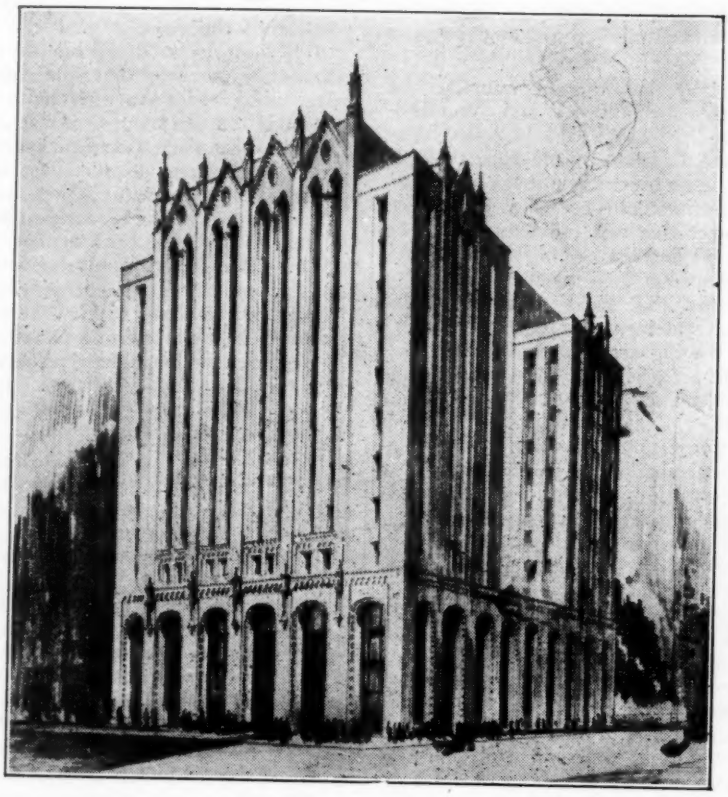
In Green v. Fraizer (1920), 253 U. S. 233, the court upheld various statutes by the State of North Dakota, which were attacked under the due process clause as authorizing taxation for purposes which were not public purposes. The court stated at page 239:

"In the present instance under the authority of the constitution and laws prevailing in North Dakota the people, the Legislature, and the highest court of the State have declared the purpose for which these several acts were passed to be of a public nature, and within the taxing authority of the State. With this united action of people, Legislature and court, we are not at liberty to interfere unless it is clear beyond reasonable controversy that rights secured by the Federal Constitution have been violated."

See also: Strickley v. Highland Boy Mining Co., 200 U. S. 527; Oneill v. Leamer, 239 U. S. 234; Mt. Vernon Cotton Co. v. Alabama Power Co., 240 U. S. 30.

It may be noted in closing that excess condemnation when closely restricted to small remnants is sustained by the Massachusetts court, which has adopted a fairly strict rule in connection with this matter. The Federal case of Brown v. United States makes it almost certain that a remnant provision would likewise be sustained by that court. The argument in this Federal case, and also in the Maryland case would probably sustain a broader excess condemnation

(Continued on Page 26)



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Excerpts from Decisions

EDITOR'S NOTE: *The following excerpts from judicial decisions have been contributed by Judge Bertin A. Weyl and Mr. Reuel L. Olson. It is hoped that others of our readers will from time to time mail to the* BULLETIN *for publication interesting matters of this kind.*

PARAGRAPHS FROM WASHINGTON, D. C.

Mr. Justice Holmes of the United States Supreme Court still continues to embellish his decisions with sparkling gems of thought characteristic of his acute and penetrating insight into the problems of the second quarter of the Twentieth Century — although he numbers among his experiences active participation in such historical events as the Civil War and the Spanish American War, in both of which he was wounded.

Among his recent pronouncements are the following paragraphs:

"When a legal distinction is determined, as no one doubts that it may be, between night and day, childhood and maturity, or any other extremes, a point has to be fixed or a line has to be drawn, or gradually picked out by successive decisions, to mark where the change takes place. Looked at by itself, without regard to the necessity behind it, the line or point seems arbitrary. It might as well, or nearly as well, be a little more to one side or the other. But when it is seen that a line or point there must be, and that there is no mathematical or logical way of fixing it precisely, the decision of the legislature must be accepted unless we can say that it is very wide of any reasonable mark." (Louisville Gas & Electric Co. v. Coleman, 72 L. ed. 486,489 (1928).)

And note particularly the italicized sentences in the following excerpt:

"It seems to me that the state court was right. I should say plainly right, but for the effect of certain dicta of Chief Justice Marshall which culminated in or rather were founded upon his often quoted proposition that the power to tax is the power to destroy. *In those days it was not recognized as it is today that most of the distinctions of the law are distinctions of degree.* If the states had any power it was assumed that they had all power, and that the necessary alternative was to deny it altogether. But this court which so often has defeated the attempt to tax in certain ways can defeat an attempt to discriminate or otherwise go too far without wholly abolishing the power to tax. *The power to tax is not the power to destory while this court sits.* The power to fix rates is the power to destroy if unlimited, but this court while it endeavors to prevent confiscation does not prevent the fixing of rates. A tax is not an unconstitutional regulation in every case where an absolute prohibition of sales would be one. New York ex. rel. Hatch v. Reardon, 204 U.S. 152,162,51 L. ed. 415,423, 27 Sup. Ct. Rep. 188." (Panhandle Oil Co. v. Mississippi, 72 L. ed. 517 (1928).)

REUEL L. OLSON.

A JUDICIAL CURIO

In the case of Berry, 147 Cal. 523, it appeared that Berry had been convicted of violation of an ordinance of Marin County adopted prior to 1905, which among other things prohibited the use of automobiles on certain parts of the county roads and also the running of any automobile on any county roads between sunset of any day and sunrise on the day following. Berry applied to the Supreme Court for a writ of habeas corpus on the ground that the ordinance was unconstitutional and void as an unreasonable regulation. Justice McFarland wrote the opinion discharging the writ. In view of the progress in aviation, the latest mode of transportation, some of the views of the court regarding the automobile at a time when it was a comparatively new means of transportation become very interesting. Said the learned Justice:

"In the case at bar there is nothing in the record to show anything about the alleged unreasonableness of the ordinance except the ordinance itself; and the burden is on the petitioner to maintain that upon its face the ordinance is unreasonable. There is nothing in the record

which shows with any particularity what an automobile is, and, of course, a court could not declare unreasonable a regulation about something of which it has no knowledge; therefore, in order to at all consider the question here involved, we must assume judicial knowledge of an automobile and its characteristics and the consequences of its use—under the statutory provision that courts take judicial notice 'of the true significance of all English words and phrases.' We may assume, therefore, to have what is common and current knowledge about an automobile. Its use as a vehicle for traveling is comparatively recent. It makes an unusual noise. It can be and usually is made to go on common roads at great velocity—at a speed many times greater than that of ordinary vehicles hauled by animals; and beyond doubt it is highly dangerous when used on country roads, putting to great hazard the safety and lives of the mass of the people who travel on such roads in vehicles drawn by horses. Fearful accidents to persons driving animals which are frightened into unmanageable terror by automobiles are of common occurrence. And while there are usually laws regulating and limiting the speed at which they may be driven, it is a matter of common knowledge that these laws are frequently violated, and that it is exceedingly difficult for officers, even in the day-time, to stop them when going at forbidden speed and arrest the drivers. And it is apparent that this would be much more difficult to do in the night-time. Moreover, in the night-time even those drivers of automobiles who might be considerate of the safety of others would not be able to see an approaching team in time to take the proper precautions. Considering these matters, and many others which might be suggested, we see nothing unreasonable in the regulation—and it is only a regulation—which forbids the use of automobiles on counrty roads in the night-time.

"Of course, if the use of automobiles gradually becomes more common, there may come a time when an ordinance like the one here in question would be unreasonable. As country horses are frequently driven into cities and towns many of them will gradually become accustomed to the sight of automobiles, and the danger of their use on country roads will grow less. But the supervisors who passed this ordinance were dealing with present conditions in Marin County; and we are not prepared to say judicially that under present conditions the ordinance is so unreasonable as to be void."

We may soon find a decision in which the court will assume judicial knowledge of airplanes or dirigibles, their characteristics, use, etc.

BERTIN A. WEYL.

SENATE CONSTITUTIONAL AMENDMENT NO. 16

(Continued from Page 23)

provision, permitting the condemnation of land behind the immediate street frontage and substituting that land in place of the land taken for street purposes, wherever any practical argument can be presented which will show a reasonable necessity for such substitution in order to take care of existing buildings which will have to be moved back. Probably a general unlimited substitution arrangement would not be sustained, and almost surely any provision authorizing the condemnation of entire blocks or squares and re-platting them would be held invalid.

An examination of the proposed amendment, in view of the above discussions would indicate that while the remnant situation would undoubtedly be taken care of by it, and to that extent it would almost unquestionably be sustained by the Federal Court, a case could also well be conceived which would come within the broad wording of the proposed amendment, and which would include the taking of property not needed for the immediate public improvement project. In the latter event it seems extremely doubtful if the courts would sustain the provision against a Federal constitutional attack.

(The foregoing report was approved by the Committee on Constitutional Amendments.)

New Forms of Guarantees and Policies of Title Insurance

Marking a great step forward in the issuance of title insurance, Stuart O'Melveny, first vice-president of Title Insurance and Trust Company and president of the California Land Title Association, has announced the details of the new forms of guarantees and policies of title insurance now being issued by the company. All the principal forms of evidences of title issued by the company have been revised along advanced lines, Mr. O'Melveny states, and constitute the greatest innovation in the title business since its inception many years ago. The forms used by the title insurance companies in New York, Philadelphia, Chicago, Detroit and other large cities in the United States were carefully studied and analyzed and the best features of each gathered together into the new forms of the Title Insurance and Trust Company. This work took an entire year to complete, according to Mr. O'Melveny, as not only were the forms of all of the best companies of the United States examined but the officials and experts of such companies were consulted with reference to their title practices and methods.

The Guarantee of Title has been improved and revised and many of the exceptions eliminated. A new and very advanced form of Policy of Title Insurance has been perfected which should prove popular with persons buying or lending money on real estate. This Policy of Title Insurance is issued to protect both the owner of the land and the owner of any note secured by a mortgage or deed of trust shown therein and each successor in interest in ownership of such indebtedness. The policy is written for a definite and stated amount and insures each person named against loss on account of any defect, lien or encumbrance not mentioned in the policy and, subject to the same exceptions, that the person in whom title is vested owns a marketable title therein. Each person is named in the policy who is the owner of a note secured by a recorded mortgage or deed of trust and his or her successors in interest in the ownership of such indebtedness are protected, to the extent of the coverage, against loss of principal, interest or other sums secured thereby, which shall be sustained by reason of any defect in the execution of the note or the mortgage or deed of trust or by reason of the priority thereto of any lien or encumbrance, except as shown in the policy.

The new form of Owner's Policy of Title Insurance, Mr. O'Melveny reports, is designed to protect an owner of land without affording any coverage to a mortgagee or beneficiary. The policy insures the owner against loss on account of any defect, lien or encumbrance not mentioned in the policy and, subject to the same exceptions, that he owns a marketable title therein. Such insurance covers defects in the records of title, forgeries and false personations.

In all cases where a person acquires land and gives a mortgage or deed of trust back, the company, if requested, will issue an Owner's Policy in favor of the owner and a Mortgagee's or Beneficiary's Policy in favor of the mortgagee or beneficiary. This allows each person interested in the property to have his own policy rather than a joint policy, which, while including the owner in its terms, is delivered to and held by the mortgagee or beneficiary.

Another innovation in policy forms, Mr. O'Melveny states, is the new Mortgagee's or Beneficiary's Policy. This form of policy is the one preferred by local banks and lenders of money to protect their loans. The rate charged is less than for policies described hereinbefore. It insures the owner of the note secured by the mortgage or deed of trust and each successor in interest in ownership of said indebtedness against loss of principal, interest, or other sums secured thereby, which the insured shall sustain by reason of any defect in the execution of the note or the mortgage or deed of trust, by reason of the unmarketability of the title, or by reason of any defect in, or lien or encumbrance of the title, except such as are shown in the policy. Such matters as forgeries, false personations, and any invalidity in the records of title are of course covered.

The Mortgage Foreclosure Guarantee,

recently compiled especially for the use of attorneys in the preparation of the complaint and other pleadings in an action to foreclose a mortgage, presents, briefly and concisely, all essential matters disclosed by examination of the official records, in so far as they relate to the particular security involved. Necessary or proper parties defendant are shown, with sufficient additional data to indicate clearly the respective rights of each, the nature and relative priority of the interest in or lien upon the mortgaged realty, and the liability, if any, for deficiency judgment.

A statement of liens, encumbrances and other matters superior or prior in time to the mortgage under consideration is given in this form of guarantee. This, of course, includes a list of delinquent or unpaid taxes or assessments which materially affect the interest of the mortgagee and often require prompt attention. There is also set forth detailed information as to corporate organization and status and similar data as to any court action, either civil or probate, in so far as is necessary to determine the identity or qualification of proper parties to the proposed foreclosure. In addition, the mailing address of the parties or their attorneys, as disclosed by the Recorder's mailing list and the files of court actions, is given.

Mr. O'Melveny, in announcing the inauguration of this new set of policies, said that he believes the new forms should prove most satisfactory to all persons buying real estate or loaning money on realty, and that they provide the maximum of protection.

The company has incorporated all of these forms in a booklet.

Book Reviews

HARRY GRAHAM BALTER *of the Los Angeles Bar*

Lecturer in Law at the College of Law, Southwestern University

THE LAW OF BILLS, NOTES, AND CHECKS; Melville M. Bigelow, Ph.D.; 1928, 3rd edition, lxix and 556 pp.; Little, Brown, and Company, New York.

In 1900, *Bigelow on Bills, Notes, and Checks* had its secure spot in many a law office and was accepted as authoritative to a high degree. But much water has passed under the bridge since that time and with the multitudinous changes in the law of negotiable instruments brought in by the new century, the value of Bigelow as a guide became correspondingly lessened. The present 1928 edition by William Minor Lee, L.L.D., of the University of Virginia should go far to re-establish Bigelow to the esteem it formerly held.

The plan of attack into the morass of laws, rules and ideas affecting bills, notes and checks is scholarly and orderly. Preliminary matters such as non-negotiable instruments and the historical background are first discussed; then the subjects of Parties, Delivery, Formal Requisites, Notes, Bills, Checks, Indorsements, Presentment, Protest, Notice, Dishonor, Surety and Guaranty, Holder in Due Course, Defenses, Equities, Discharge, and Actions are dealt with in the order given. From this list it can readily be perceived that in the course of five hundred and fifty-six pages, the author is assaying a considerable task. More than ordinary success has been achieved. Because of the symmetry of the outline, and the excellence of the index and table of contents, the particular point desired can readily be found—and having once been located, it will be seen to be adequately elaborated by text discussions and demonstrated by citations. Absolute in its orthodoxism, the plan is yet highly desirable in dealing with negotiable instruments, where the schematic arrangement is the most important concern.

One fact struck the reviewer because of its very persistency. From the very beginning, the author differentiates the Common Law and the Law Merchant. The brief historical background presented explains the differing paths of the two with some degree of definiteness. Strangely enough, the writer carries this separatism throughout the book, creating the impression that today, too, there is a clevage, even a conflict, between commercial law and other law. It is elementary that mercantile law is so thoroughly impregnated in the matrix of our legal structure that it is only to be segregated by the historical and analytical minded legalist; that an attempt, apparent or real, to keep the two apart is conspicuous by its incongruity.

However, this feature is probably left over as a legacy from the nineteenth century editions of the present work. Certainly the text proper and the citations and discussions accompanying it, are modern enough, making *Bigelow on Bills, Notes, and Checks* a contribution to this particular field of law.

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